IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(1) L.P.A.No. 77 of 2007

....

Sunil Kumar Nandu.

..... Appellant through
Shri Akshay Bhan, Advocate.

Versus

Sh.Jagdeep Nidan and others.

..... Respondent no.1 through
Shri K.L.Suneja, Advocate.
Respondent no.2 through Shri
H.N.Mehtani, Advocate.
Respondent no.3 through Shri
B.S.Rana, Additional
Advocate General, Haryana.

....

(2) L.P.A.No. 84 of 2007

....

Jagdeep Nidan.

..... Appellant through
Shri K.L.Suneja, Advocate.

Versus

The Haryana Public Service Commission and another.

..... Respondent no.1 through Shri
H.N.Mehtani, Advocate.
Respondent no.2 through Shri
B.S.Rana, Additional
Advocate General, Haryana.

....

Date of Decision: 05.11.2007

....

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

....

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

....

VIJENDER JAIN, CHIEF JUSTICE

This judgment will dispose of the above two appeals which have been preferred under Clause X of the Letters Patent against judgment dated 24.1.2007 of the learned Single Judge vide which C.W.P.No.4779 of 2005 has been decided.

Jagdeep Nidan (hereinafter referred to as `the appellant') filed the aforementioned writ petition claiming that he belonged to Scheduled Caste A-Category of the State of Haryana. In response to the advertisement issued by the Haryana Public Service Commission (for short, `the Commission') for recruitment to five temporary posts of Assistant Director, Industrial Safety and Health (Chemical) Class-II, he had applied for consideration of his candidature against one of these posts which was reserved for the candidates of the said category. It was pleaded that Sunil Kumar Nandu (who was impleaded as respondent no.3 in the writ petition and hereinafter described as `respondent no.3' even though he has filed a separate appeal against the same judgment being L.P.A.No.77 of 2007) actually hailed from Delhi and, therefore, his application submitted qua the reserved post could not have been entertained by the Commission. As per

the appellant, since respondent no.3 was not a bona fide resident of Haryana, he was not entitled to be considered for appointment against the reserved post as the same was meant only for the candidates of Scheduled Castes A-Category of the State. It was the further case of the appellant that the certificate produced by respondent no.3 showing him to be resident of Haryana was forged and procured and, therefore, his selection was liable to be set aside.

After considering the entire material on record, the learned Single Judge concluded that the certificate indicating the domiciled status of respondent no.3 was, indeed, not genuine and accordingly, set aside his appointment against the reserved post. However, no further direction regarding the preparation of fresh merit list was given, which would have entitled the appellant to get employment against the said post which stood abdicated by virtue of the impugned judgment.

It may be mentioned here that respondent no.3 did not appear in the writ petition.

In his L.P.A. No.77 of 2007, respondent no.3 has asserted that he had never been served in the writ petition and the impugned judgment has been passed completely behind his back. Besides, he has pointed out that there was no condition which required an incumbent to be domiciled in the State of Haryana so as to avail the benefit of reservation and, therefore, the findings of the learned Single Judge were not only wrong, but were also unwarranted.

On the other hand, the appellant is aggrieved by the following

portion of the impugned judgment:-

> "The claim of the petitioner is that he fulfills all the eligibility criteria for the post of Assistant Director, Industrial Safety and Health (Chemical), Class-II, therefore, he should be given appointment, is without any merit because he has been declared as unsuccessful candidate by the respondent-Commission. His claim is therefore, rejected."

It has been pleaded by the appellant in his L.P.A. No.84 of 2007 that while setting aside the above reproduced portion of the impugned judgment, a direction may be issued to the Commission to prepare a fresh merit list and recommend his name for appointment against the reserved post.

We have heard the learned counsel for the parties and have perused the record.

The relevant portion of the advertisement on the basis of which the rival contenders had applied, is reproduced below:-

> "xx xx xx xx xx xx xx
>
> 4.Recruitment to five temporary posts of Assistant Director, Industrial Safety and Health (Chemical) Class-II out of which one post is reserved for S.C.`A' of Haryana in Labour Department, Haryana.
>
> Pay Scale: 6500-200-8500-EB-200-10500
>
> Age : 21-40 years on 2.4.2004.
>
> Essential Qualifications:

(i) A Degree in Chemical Engg. of a recognised university.

(ii) Adequate knowledge of Hindi.

(iii) Two years practical experience relating to Chemical Engineering in a factory of repute.

xx xx xx xx xx xx xx

7. For Schedule caste/Schedule Tribes of all States, backward class of Haryana, Ex-Servicemen of Haryana and the Govt.employees of the concerned departments, relaxation in upper age limit will be given as per the directions/ instructions of the State Government."

Clearly, there was no condition requiring a candidate to establish his domiciled status as being within the State of Haryana to enable him to compete for the reserved post. Rather, Clause-7 reproduced above threw the post under reserved category open to the Scheduled Castes/ Scheduled Tribes of all the States. Therefore, there being no criteria requiring a candidate to be domiciled within the State of Haryana, learned Single Judge apparently fell in error by depriving respondent no.3 of his selection on the ground that he did not belong to State of Haryana and the certificate submitted by him being not genuine.

In fact, the certificate did not warrant any comment in view of there being no requirement to establish the domiciled status of an aspirant. The only requirement was that he should belong to Scheduled Caste A-Category as recognised within the State of Haryana, which respondent no.3 fulfilled, besides fulfilling other relevant considerations. In this view of the

matter, he could not have been deprived of his legitimate selection.

No other point has been urged before us.

Resultantly, the appeal of respondent no.3 is accepted, whereas the appeal of the appellant is dismissed. As a consequence, the writ petition will stand dismissed in toto.

(Vijender Jain)
Chief Justice

November 05,2007
"SCM"

(Mahesh Grover)
Judge